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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/415,324	10/08/99	STRICKLAND	D 5700-001

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QM12/0202

EXAMINER

HALE, G

ART UNIT	PAPER NUMBER
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3741

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DATE MAILED:

02/02/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.
09/415,324

Applicant(s)

Strickland et al

Examiner
Hale

Group Art Unit
3741



☐ Responsive to communication(s) filed on _____.

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 1-20 is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 1-20 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☒ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been
☐ received.

☐ received in Application No. (Series Code/Serial Number) _____.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____.

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☒ Notice of References Cited, PTO-892

☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 2

☐ Interview Summary, PTO-413

☒ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, line 4, "the adjacent inner thighs" does not have a proper antecedent basis and it is not clear as to whether it is of the "wearer" or "the pants".

In claim 8, line 2 and in claim 18, line 2, there is no antecedent basis for "the inner aspect".

However, the claims, as best understood, have been examined on their merits.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 and 5-13 are rejected under 35 U.S.C. 102(b) as being anticipated by Stall.

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In regard to claim 1 Stall discloses an athletic garment including a body with a pair of thigh portions and a pair of guard members (3) to cover the adjacent inner thighs.

In regard to claims 5,7 and 11, the guard members of Stall are shock absorbing. And are deflective to the degree as broadly claimed in claims 6 and 10. Stall discloses the pads as being supported in pockets. (See Stall, figure 2 and lines 34-69). The pads of Stall are flexible as broadly claimed in claims 12 and 13. (See Stall, lines 34-69 and figure 2).

Claims 1 and 5-13 are rejected under 35 U.S.C. 102(b) as being anticipated by Loper et al. In regard to claim 1, Loper et al discloses an athletic garment (10) including a body with a pair of thigh portions (13,15) and a pair of guard members (22,24) to cover the adjacent inner thighs. In regard to claims 5, 7 and 11, the guard members of Loper et al are shock absorbing and are deflective as broadly claimed in claims 6 and 10. Loper et al discloses the guard as being supported in the pocket (18,20) as claimed in claim 8 and 9. The guards of Loper et al are flexible as claimed in claims 12 and 13.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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Claims 2-4 and 14-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stall.

Stall discloses the invention as broadly claimed. However, Stall does not specifically disclose the garment as being shorts as claimed in claims 2 and 4; as being elastic as claimed in claim 3 and the deflective layer as being plastic as claimed in claim 14.

In regard to claims 2 and 4, the Examiner takes Official notice that it is well known that sports pants with guards therein are constructed as shorts for wear during sports that are played in warm climates to provide comfort to the wearer. Accordingly, it would have been obvious to one having ordinary skill in the art to construct the garment of Stall including the guards therein as shorts for comfortable wear while playing other sports in warm climates and to provide the protection of the guards as disclosed in Stall.

In regard to claims 3 and 20, the Examiner takes official notice that it is well known to construct sports garments of elastic material such as spandex for comfort, support and improved fit.

Accordingly, it would have been obvious to one having ordinary skill in the art at the time the invention was made to construct the garment of Stall of elastic material for improved fit, comfort and support.

In regard to claim 14, the examiner takes Official notice that deflective layers in sports pants are well known as being constructed of plastic to deflect projectiles or other objects during sports activities to protect the wearer from injury. Accordingly, it would have been obvious to construct

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the deflective layer of plastic to provide the required or desired degree of protection to the wearer when deflecting objects during sports activities.

Claims 2-4 and 14-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Loper et al..

Loper et al. discloses the invention as broadly claimed. However, Loper et al. does not specifically disclose the garment as being shorts as claimed in claims 2 and 4; as being elastic as claimed in claims 3 and 20 and the deflective layer as being plastic as claimed in claim 14.

In regard to claims 2 and 4, the Examiner takes Official notice that it is well known that sports pants with guards therein are constructed as shorts for wear during sports that are played in warm climates to provide comfort to the wearer. Accordingly, it would have been obvious to one having ordinary skill in the art to construct the garment of Loper et al. including the guards therein as shorts for comfortable wear while playing other sports in warm climates and to provide the protection of the guards as disclosed in Loper et al.

In regard to claim 3, the Examiner takes official notice that it is well known to construct sports garments of elastic material such as spandex for comfort, support and improved fit. Accordingly, it would have been obvious to one having ordinary skill in the art at the time the invention was made to construct the garment of Loper et al of elastic material for improved fit, comfort and support.

In regard to claim 14, the examiner takes Official notice that deflective layers in sports pants are well known as being constructed of plastic to deflect projectiles or other objects during sports

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activities to protect the wearer from injury. Accordingly, it would have been obvious to construct the deflective layer of Loper et al. plastic to provide the required or desired degree of protection to the wearer when deflecting objects during sports activities.

Both Stall and Loper et al. disclose the guard as being compressible as broadly claimed in claims 15 and 17; as being shock absorbing as claimed in claim 16 and as being in a pocket as claimed in claims 18 and 19.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The cited prior art discloses sports pants with guards.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gloria Hale whose telephone number is (703) 308-1282.


Gloria Hale

Patent examiner - Art Unit 3741